

ORDER SHEET
IN THE HIGH COURT OF SINDH, KARACHI
Criminal Bail Application No. 1712 / 2019
Muhammad Kamran Shaikh S/o Muhammad Saleem

Date

Order with signature of Judge

For hearing of bail application.

07.05.2020.

Mr. Muhammad Aslam Bhutta along with
Mr. Muhammad Zareef Lakho Advocates for Applicant.
Mr. S. Meeral Shah Bukhari Additional Prosecutor General.
Mr. Shoukat Ali Advocate for Complainant.
Applicant Muhammad Kamran Shaikh present in Court.

Through this bail application under Section 498 of the Criminal Procedure Code, the applicant / accused seeks pre-arrest bail in FIR No. 977/2019 registered under Section 489-F, Pakistan Penal Code at P.S. Preedy, Karachi as his pre-arrest bail application stands dismissed by the learned Trial Court vide order dated 13.11.2019.

I have heard the learned Counsel for the Applicant and the Complainant as well as the Additional Prosecutor General and my observations are as under: -

- 1) As per contents of the FIR it is the case of the Complainant that he had some business relations with the applicant / accused for the last 3/4 years in respect of supply of chicken on credit basis and an amount of Rs. 14,00,000/- was outstanding, out of which applicant has paid Rs. 9,00,000/- and for the balance amount of Rs. 5,00,000/- he had issued (4) four post-dated cheques of Rs. 1,25,000/- each of different dates which on presentation were dishonoured due to insufficient balance; hence, a case was made out under Section 489-F PPC. However, the record placed before the Court by the

complainant himself does not exactly corroborate with the facts so narrated in the FIR itself. As per documents / statement of the complainant filed in this Court, the dispute between the parties was going on since 2018 when certain cheques were issued; but were dishonoured and thereafter, on 6.11.2018 a written agreement was entered into between the parties according to which out of Rs.14,00,000/- the applicant paid Rs. 4,00,000/- in cash upon signing of the agreement; and further agreed that Rs.10,00,000/- would be paid through 8 post-dated cheques of Rs. 1,25,000/- each starting from 20.01.2019 to 20.08.2019. It has been stated in Court that the first four cheques were also not encashed, but payment was made in part(s) from time to time through cash mode and first four, out of the eight such cheques were returned to the applicant. On the other hand, the case of the applicant is that the total amount has been paid and the balance four cheques have been retained unlawfully by the complainant and are being used as a tool to blackmail and harass the applicant.

- 2) It is apparent from the FIR and the challan filed before the learned Trial Court that these facts are not mentioned in the FIR and it is simply stated that out of Rs. 14,00,000/- Rs. 9,00,000/- has been paid and for the remaining balance Rs.5,00,000/-, some cheques were issued which were dishonoured. On an overall tentative assessment, it does not appear that these cheques were issued entirely for the purpose of repayment of a loan or an obligation; but for an understanding to repay the amount in part and these cheques were to be returned being available with the complainant as a security. This fact is substantiated from the documents placed by the complainant as well as the arguments made before the Court.
- 3) The objection of the complainant's Counsel that some other FIR was also lodged against the applicant by

someone else in somewhat similar circumstances does not appear to be justified so as to consider the same for refusal of bail in this case at this stage of proceedings. Moreover, I have been informed that said matter stands compromised between the parties.

- 4) In presence of a written agreement dated 6.11.2018 between the parties, as well as the conduct of the complainant in receiving cash payments from time to time in lieu of cheques, and then returning at least 4 cheques of Rs.125,000/- each, as of today it cannot be said absolutely that the cheques were issued with dishonest intention to repay a loan or in lieu of some obligation; rather, most likely were issued as security; resultantly, making out a case in favour of the applicant.
- 5) Complainant's Counsel was also asked to show the post-dated cheques and as to whether they were issued in the name of the complainant or not, to which his reply was that the complainant is not in possession of these cheques which have been given to the Prosecution. Court has not been assisted as to whether the cheques in question were cross cheques in favour of the complainant or simply cash cheques as it reflects that earlier the parties had exchanged cash cheques which were not in the name of the complainant.
- 6) The maximum punishment provided for the offence in question is three years and though it is not an absolute rule that in each and every case when the matter does not fall within the prohibitory clause, bail must be granted; but if a case is otherwise made out after considering the facts and circumstances of the case, then the benefit of this rule must go to the accused.
- 7) For the present purposes, this is further supported by the orders / observations of the Honourable Supreme Court in

Criminal Petition No. 299/2020 while dealing with grant of bail to under trial prisoners in the current pandemic (COVID-19) and the lockdown, wherein certain recommendations of the learned Attorney General of Pakistan for grant of bail have been approved and the case of the present Applicant apparently also falls within such recommendations.

- 8) Learned Additional Prosecutor General has argued that this is a case of pre-arrest bail under section 498 *ibid*; and therefore, the Court has to be satisfied for such grant of a pre-arrest bail, whereas, the arguments made on behalf of the Applicant are not supportive in this context. However, I am not impressed with such objection, apparently as per fact noted hereinabove, it is clearly depicted that complainant has resorted to ulterior motives with malafide intentions, and is making efforts to abuse the process of law to make good recovery of his alleged due amount; hence, the Court must come to the rescue of the accused as in the given facts a case for intervention is made out and is a fit case to exercise such discretion to grant pre-arrest bail to the accused. At pre-arrest bail stage, it is difficult to prove the element of mala fide by the accused through positive/solid evidence/materials and the same is to be deduced and inferred from the facts and circumstances of the case and if some events-hints to that effect are available, the same would validly constitute the element of mala fide¹.
- 9) It would suffice to observe that the conduct of the complainant in retaining cheques for such a long period and even after their dishonour, waiting for a considerable period of time; and not lodging the FIR instantly, does not support his case, at least, for opposing the grant of pre-arrest bail to the Applicant.

¹ KHALIL AHMED SOOMRO V The STATE (P L D 2017 Supreme Court 730)

In view of hereinabove facts and circumstances of this case I am of the view that the applicant / accused has made out a case for grant of pre-arrest bail. Accordingly, the ad-interim pre-arrest bail granted vide order dated 19.11.2019 is hereby confirmed on the same terms and conditions. It is needless to state that the observations hereinabove are tentative in nature and shall not affect the trial which is to be proceeded in accordance with law

J U D G E

Arshad/